

No. 2023-1093, 2023-1141

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

VANDEWATER INTERNATIONAL INC.,

Plaintiffs,

SIGMA CORPORATION, SMITH-COOPER INTERNATIONAL, INC.,

Plaintiffs-Appellants,

v.

UNITED STATES, ISLAND INDUSTRIES,

Defendants-Appellees

Appeal from the United States Court of International Trade in
Case No. 1:18-cv-00199, Senior Judge Leo M. Gordon

**DEFENDANT-APPELLEE’S REPLY IN SUPPORT OF ITS
MOTION FOR EXTENSION OF TIME TO FILE ITS RESPONSE BRIEF**

Defendants-appellee, the United States, respectfully submits this reply in support of its request that the Court grant an extension of time of 58 days, through April 20, 2023, for the Government to file its response brief in this appeal.

Appellant Sigma Corporation opposes our motion on the grounds that the outcome of this appeal may affect the outcome of Sigma’s parallel appeal in a False Claim Act litigation currently pending before the United States Court of Appeals for the

Ninth Circuit. Sigma concedes, however, that one of the first questions asked at oral argument before the Ninth Circuit was whether the Ninth Circuit should “wait for the Federal Circuit to decide before we decide this case?” (which Sigma’s counsel answered in the affirmative). Sigma thus cites the possibility that the Ninth Circuit will wait for a decision from this court, but never explains why any resulting delay would prejudice Sigma. If anything, Sigma’s submission indicates a *lack of prejudice* if there is a likelihood that the Ninth Circuit will await this Court’s decision prior to ruling on the False Claims Act appeal.

Also, in the same colloquy to which Sigma cites, the Ninth Circuit inquired as to whether it should wait in issuing its decision if the Supreme Court were to grant *certiorari* in another appeal that is unrelated to the issues before this Court. The Supreme Court subsequently granted *certiorari* in that separate case. Moreover, we understand that the Ninth Circuit in Sigma’s False Claims Act appeal is currently pursuing supplemental briefing regarding jurisdictional issues that are likewise unrelated to the issues on appeal before this Court. These facts further undermine Sigma’s claim of prejudice from the extension we are seeking.

By contrast, our motion for an extension of time contains detailed support for lead counsel’s numerous competing commitments through April 2023. We have also set forth several additional factors complicating the time and effort that

are required to coordinate the Government's response brief. Our motion is thus supported by good cause, and we respectfully request that it be granted.

Accordingly, we respectfully request that the Court extend to April 20, 2023 the time for the Government to file its response briefs in this appeal.

Respectfully submitted,

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February 10, 2023

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27(d)(2)(A) of the Rules of the United States Court of Appeals for the Federal Circuit, respondent's counsel certifies that this motion complies with the Court's type-volume limitation rules. According to the word count calculated by the word processing system with which this motion was prepared, the motion contains a total of 366 words.

/s/ Joshua E. Kurland